

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 96-Cr-4

CARVESTER CARVER,

Defendant.

DECISION AND ORDER

In 1996, a jury found Carvester Carver (“Carver”) guilty of conspiracy to distribute a controlled substance, for which this Court sentenced him to a term of imprisonment. Now, Carver seeks relief pursuant to 18 U.S.C. § 3582(c)(2), claiming that he is entitled to a shorter sentence. Specifically, Carver seeks correction of his sentence based solely on the recently issued decisions of *United States v. Booker*, __ U.S. __, 125 S.Ct. 738 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004).

Though invoking § 3582, Carver’s motion is substantively one under 28 U.S.C. § 2255. The Seventh Circuit Court of Appeals has stated that “[a]ny motion filed in the district court that imposed the sentence, and substantively within the scope of § 2255 ¶ 1, is a motion under § 2255, no matter what title the prisoner plasters on the cover.” *Melton v. United States*, 359 F.3d 855, 857 (7th Cir. 2004). Carver’s collateral attack proffers the argument

that his sentence was in excess of that authorized by law. Therefore, the substance of his motion clearly comes within the purview of relief contemplated by § 2255 ¶ 1.

The Court hereby notifies Carver that it intends to recharacterize his motion as one brought pursuant to § 2255. *See Castro v. United States*, 540 U.S. 375, 383 (2003). Once recharacterized, any subsequent § 2255 motions filed by Carver will be subject to the restrictions on second or successive motions found in 28 U.S.C. §§ 2244 & 2255. *Id.* Therefore, before the Court proceeds further, Carver will be given the opportunity to either (a) withdraw his motion or (b) amend it so that it contains all the § 2255 claims he believes he has. *Id.* Failure to amend the instant motion with additional grounds may foreclose Carver's raising those in a subsequent motion.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Carver **SHALL** inform the Court, no later than October 3, 2005, whether he wishes to withdraw the pending motion or proceed with the present motion recharacterized as one brought pursuant to § 2255. If Carver wishes to proceed on the recharacterized motion, he may add any additional grounds for relief by completing the attached § 2255 form. Such amendments must be received by the Court no later than October 3, 2005.

Dated at Milwaukee, Wisconsin this 7th day of September, 2005.

BY THE COURT

s/ Rudolph T. Randa _____
Hon. Rudolph T. Randa
Chief Judge